Supreme Court, U. S.
FILED
OCT 6 1980
MICHAEL RODAK, JR., CLERK

80-549

No.

IN THE

Supreme Court of the United States

October Term, 1980

JACKMAN & COMPANY, DAVID H. JACKMAN, NATIONAL DREDGING, INC., ROYAL BOSKALIS WESTMINSTER N.V., STUYVESANT DREDGING, INC., UNITED STATES CORPORATION COMPANY, UNITED STATES TRUST COMPANY OF NEW YORK, WARBURG PARIBAS BECKER INCORPORATED, and WILLIAMS-McWILLIAMS CO., INC.,

Cross-Petitioners,

—against—

GREAT LAKES INTERNATIONAL, INC.,

Cross-Respondent.

CROSS-PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

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October 6, 1980

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QUESTION PRESENTED

Has plaintiff shown "specific facts" to establish a triable issue regarding the justiciability of the claim and plaintiff's standing to bring it, given:

(a) the numerous speculative contingencies that would have to eventuate during the next two years (many of which are under the control of nonparties, governmental and private) before the theorized threatened "injury in fact" could conceivably occur;

(b) the directive of 33 U.S.C. § 622 that the federal dredger fleet be withdrawn from the market *pro tanto* with the entry of private dredgers such as that involved in this suit; and

(c) the lack of any reasonable basis for predicting that the injunction plaintiff seeks will redress the putative loss that plaintiff theorizes?

PARTIES TO PROCEEDING BELOW

Great Lakes International, Inc., cross-respondent herein, was plaintiff below and is petitioner in *Great Lakes International, Inc. v. Philip M. Klutznick, Secretary of Commerce of the United States of America, et al.*, Dkt. No. 80-366.

Cross-petitioners herein (private defendants below, and among the respondents in No. 80-366) are: Jackman & Company; David H. Jackman (deceased August 29, 1980); National Dredging, Inc.; Royal Boskalis Westminster N.V. (formerly "Royal Bos Kalis Westminster Group N.V."); Stuyvesant Dredging, Inc.; United States Corporation Company; United States Trust Company of New York; Warburg Paribas Becker Incorporated; and Williams-McWilliams Co., Inc.

Government defendants below, respondents in No. 80-366 are: Philip M. Klutznick, Secretary of Commerce of the United States of America; United States Department of Commerce, Maritime Administration; Samuel B. Nemirow, Acting Assistant Secretary of Commerce for Maritime Affairs; and Robert J. Patton, Jr., Secretary of the Maritime Administration.

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Cross-Petitioners,

—against—

GREAT LAKES INTERNATIONAL, INC.,

Cross-Respondent.

CROSS-PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

PRIOR OPINIONS

The order of the United States Court of Appeals for the Second Circuit, affirming the decision of the United States District Court for the Southern District of New York, dismissing the complaint for lack of standing, appears as Appendix A to plaintiff's Petition for a Writ of Certiorari in No. 80-366 ("plaintiff's petition"). The transcript of the oral opinion of the district court appears as Appendix B to plaintiff's petition; and the memorandum-endorsed order of the district court appears as the appendix to this cross-petition. None of the foregoing is reported.

JURISDICTION

The order of the court of appeals was dated and entered on June 16, 1980. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1). Jurisdiction in the district court was based on 28 U.S.C. § 1331(a).

This cross-petition for a writ of certiorari is filed pursuant to SUP. CT. R. 19.5. Plaintiff's petition for certiorari was received by cross-petitioners on September 5, 1980.

STATUTES INVOLVED

The statutes involved in this case are Title XI of the Merchant Marine Act of 1936, 46 U.S.C. §§ 1271-1280, and the Rivers and Harbors Improvements Act of 1978, 33 U.S.C. §§ 622, 624, both of which are set forth verbatim in Appendix C to plaintiff's petition.

STATEMENT OF THE CASE

The nature of this case, the decisions below and the facts relevant to plaintiff's petition are set forth in the Brief for Private Respondents in Opposition ("brief in opposition") filed herewith in No. 80-366.

The additional facts pertinent to this cross-petition are these:

Defendants' motions for summary judgment, insofar as they contested plaintiff's standing to sue, were based not only on the failure of plaintiff's claim to come within the zone of interests sought to be protected by the statute in question (Title XI of the Merchant Marine Act of 1936, 46 U.S.C. §§ 1271-1280), but also on the non-justiciability of that claim and plaintiff's inability to show injury in fact.

The district court, in granting defendants' motions on zone-test grounds, assumed *arguendo* that plaintiff could have satisfied Article III's requirement of injury in fact, had the interest plaintiff attempts to prosecute in this suit

been within the zone of interests of the statute in question (plaintiff's petition 5a-6a). The court of appeals did not consider that question (*see* plaintiff's petition 2a-3a).

REASONS FOR GRANTING THE CROSS-PETITION

Plaintiff asserts that the district court's *arguendo* assumption regarding injury in fact represented a determination on the merits (plaintiff's petition 7-8). Cross-petitioners disagree for the reasons stated in their brief in opposition (pp. 19-20 & n. 16), but nevertheless make this cross-petition to preserve their rights in the light of the suggestion of this Court in *Broadcast Music, Inc. v. Columbia Broadcasting System, Inc.*, 441 U.S. 1, 24 n. 43 (1979).

If, contrary to our submissions, certiorari is granted to review plaintiff's standing under prudential zone-test limitations, we urge, on the grounds set forth in Point II A. of our brief in opposition and for reasons of judicial economy, that the constitutional requirements of standing be reviewed at the same time.

October 6, 1980

Respectfully submitted,

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APPENDIX

Index No. 79 Civ. 6869 (WK)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

GREAT LAKES INTERNATIONAL, INC.,
Plaintiff,

—against—

SECRETARY OF COMMERCE OF THE UNITED STATES OF AMERICA, *et al.*,

Defendants.

NOTICE OF CROSS-MOTION
[FOR SUMMARY JUDGMENT]

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3/12/80

Motion granted for lack of standing for reasons stated on the record in open court.

So ordered. March 12, 1980

WHITMAN KNAPP

U. S. D. J.

DISTRICT COURT
FILED
MAR 12 1980
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RKL